IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

SANDRA H. SMITHERS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 2004-02-101
	)	
BRACEBRIDGE CORPORATION and	)	
MBNA AMERICA BANK	)	
DELAWARE CORPORATION,	)	
	)	
Defendants.	)	

Submitted: August 18, 2006
Decided: September 5, 2006

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OPINION

This negligence action arises from an incident which occurred on February 5, 2002 in Wilmington, Delaware. Plaintiff, Sandra Smithers, ("plaintiff") was walking on the sidewalk on the eastern side of the 1000 block of Walnut Street when she tripped and fell over support attached to an overturned construction sign. As a result, plaintiff sustained injuries to her knee, elbow, shoulder and neck. Plaintiff initiated this action against Bracebridge Corporation and MBNA Bank Delaware Corporation, the owners of

the property abutting the sidewalk on the theory that the owners were negligent in failing to maintain the sidewalk abutting their property.

At the time of the incident, the property at 1010-1012 Walnut Street was owned by defendant Bracebridge ("Bracebridge"), an affiliate of defendant MBNA America Bank Delaware Corp. ("MBNA"). The lot was used as a parking lot for MBNA employees who worked at MBNA's main complex immediately across Walnut Street. The YMCA owned the property to the north of the MBNA lot and also used their property as a parking lot. Plaintiff owned the property to the south of the MBNA lot, where her sister operated a business on the first floor and Phalanges hair salon occupied the second floor.

The sign in question was labeled "Property of Enterprise Flasher Company. The sign read "Road Work Ahead," though it is unclear from the record what road work the sign referenced.[1] Terry Reilly ("Reilly"), the director of company real estate for MBNA at the time of the incident, testified that MBNA was not engaged in any development projects within the vicinity at that time. Testimony from the witnesses indicated that the sign had been there for at least a month and possibly up to a year, and had been overturned for about three weeks.[2] Furthermore, the record indicates that at the time of the incident, the sign was entirely in front of the YMCA lot, except for the support plaintiff tripped over which was situated within the area between the fences

[1] Reilly testified that when a developer wants to perform work on a property abutting a state owned road, the developer must first seek permission from the State. The State then develops a safety plan which may require that certain road signs be placed. The signs are owned by individual companies which deliver the signs to the sight and place them accordingly.

[2] Plaintiff testified that she was in the area 2-3 times a week in the 6 months preceding the accident. She also testified that she was aware of the conditions of the sign, had discussed it with her sister, and had passed by the sign numerous times before the incident.

delineating MBNA's parking lot and YMCA's parking lot. The record does not indicate who owned the eight inches between MBNA and YMCA's respective fences.

Sheila Wilkins ("Wilkins"), a hair stylist at Phalanges, testified she noticed the sign inside the MBNA lot several days after the incident, and removed from the lot a few weeks later. Additionally, she testified that when the sign was standing it was closer to the MBNA property.

On February 3, 2004, plaintiff filed a complaint against MBNA and Bracebridge alleging both corporations were negligent for failing to remove the sign. Additionally, plaintiff argued the defendants violated Wilmington City Code § 42-42 for permitting a hazardous situation to persist on the sidewalk in front of their property.

Defendants moved for summary judgment on the ground they had no statutory duty to maintain the city sidewalk where the incident occurred. On November 4, 2005, this Court granted defendants' motion on plaintiff's § 42-42 claim and denied defendants' motion on plaintiff's common-law negligence claim.

On July 25, 2006, this Court held a trial on plaintiff's common-law negligence claim. This Court reserved decision and allowed the parties to submit post-trial arguments on the applicable law.

DISCUSSION

In order to prevail in a negligence action, a plaintiff must show, by a preponderance of the evidence that a defendant's negligent act or omission breached a duty of care owed to the plaintiff in a way that proximately caused plaintiff's injury. *Duphily v. Delaware Elec. Co-op., Inc.*, 662 A.2d 821, 828 (Del. 1995) citing *Culver v.*

Bennett, 588 A.2d 1094, 1096-97 (Del. 1991). Our first inquiry, then, is whether the defendants had a duty to remove the sign. Under Delaware law, "a property owner, who is otherwise without fault, owes no duty to pedestrians who are injured on an abutting highway or sidewalk which is part of the public domain." *Coale v. Rowlands*, 723 A.2nd 395 Del. Supr. (1998), citing *McGrath v. Levin Properties*, 606 A.2d 1108, 1110 (N.J. Super. Ct. App. Div. 1992). In *Eck v. Birthright of Delaware, Inc.*, 559 A.2d 1227, 1228 (Del. 1989) (per curiam) the Delaware Supreme Court found that an abutting landowner was not "at fault" and therefore had no duty to maintain a tree on the sidewalk which obstructed a stop sign because there was no evidence to suggest that the landowner had "caused the defect." Therefore, under Delaware law, an abutting landowner has no duty to maintain the sidewalk abutting his or her property unless the plaintiff can prove that the landowner caused the defect in question.

Plaintiff argues that MBNA had personnel patrolling around its properties across Walnut Street where she sustained the injuries. Thus, as a result of MBNA's procedure for meticulously cleaning its public sidewalks, it must have been on notice of the sign across the sidewalk. Additionally, plaintiff argues MBNA eventually did move the sign to its property which alludes to responsibility. Therefore, plaintiff reasons that these activities show awareness and basis for the Court to impose liability.

The argument of plaintiff, however, over looks the testimony in the record that the sign was placed in the area at the direction of the State of Delaware Department of Transportation and MBNA was not conducting any work in the area. Further, the testimony in record from MBNA personnel indicates they had no authority to move or relocate the sign.

The testimony in the record also indicates the sign support where plaintiff tripped and sustained the injuries was located in the area between the property owned by YMCA and MBNA.

The record further indicates ambiguity as to whether the support plaintiff tripped over was in front of MBNA's lot or YMCA's lot. Additionally, plaintiff has failed to establish that the sign was placed on the sidewalk pursuant to any MBNA development. The only evidence in the record is that the sign was placed there during road construction on Walnut Street. As such, plaintiff has failed to establish that the defendants caused or were in any way responsible for the obstruction. Absent any evidence that the sign was in fact in front of the MBNA lot or that the defendants caused the defect, this Court cannot find, by a preponderance of the evidence, that the defendants had a duty to maintain the sidewalk near their parking lot.

Plaintiff argues that Wilkins's observation of the sign inside the MBNA lot indicates defendant exercised dominion over the sign and therefore assumed responsibility for the condition. I find this argument unconvincing. Regardless of where the sign ended up after the accident, plaintiff is required to prove the defendants caused the defect in question. See *Eck* 559 A.2d at 1228, *supra*. The fact that the sign somehow ended up in the MBNA parking lot does not, without more, prove that the defendants were responsible for the presence of the sign on the day of the incident. Rather, the record indicates that the sign was not owned by the defendants, nor did they in any way participate in placing the sign on the sidewalk.

Next, plaintiff argues the defendants assumed a duty to maintain the sidewalk. Plaintiff notes that MBNA picks up litter and debris on the sidewalks around its offices

on the opposite side of Walnut Street, and claims that MBNA told plaintiff and other nearby property owners that MBNA takes excellent care of its properties, which in turn reflects well on nearby properties. This is not a sufficient basis to impose liability, especially, since there is no evidence MBNA received any benefit from the sign. It simply does not follow that by cleaning litter on the street MBNA somehow assumed an affirmative duty to remove road signs placed there at the direction of the Department of Transportation.

ORDER

For the reasons stated herein, I find that plaintiff Sandra H. Smithers has failed to prove, by a preponderance of the evidence, that defendants MBNA America Bank and Bracebridge Corp. were negligent in failing to maintain the sidewalk near their parking lot. Judgment is entered for the defendants. Each party will pay their own costs.

SO ORDERED this 5th day of September 2006

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Alex J. Smalls
Chief Judge

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